

STANDARD CONDITIONS OF SALE

1. Definitions

- 1.1 'Buyer' means the person who buys or agrees to buy the Goods from the Seller.
- 1.2 'Conditions' means the Terms and Conditions of sale set out in this document and any special Terms and Conditions agreed in writing by the Seller.
- 1.3 'Delivery Date' means the date specified by the Seller when the Goods are expected to be delivered, time not to be of essence.
- 1.4 'Goods' means the articles that the Buyer agrees to buy from the Seller.
- 1.5 'Price' means the Price for the Goods excluding carriage, packing, insurance and VAT.
- 1.6 'Seller' means W H Skinner of Mount Pleasant Farm, Brishing Road, Chart Sutton, Maidstone, Kent ME17 3SP.

2. Conditions applicable

- 2.1 These Conditions shall apply to all contracts for the sale of Goods by the Seller to the Buyer to the exclusion of all other Terms and Conditions including any Terms or Conditions that the Buyer may purport to apply under any purchase order confirmation of order or similar document.
- 2.2 All orders for Goods shall be deemed to be an offer by the Buyer to purchase Goods pursuant to these Conditions.
- 2.3 Acceptance of the delivery of the Goods shall be deemed conclusive evidence of the Buyer's acceptance of these Conditions.
- 2.4 Any variation to these Conditions (including any special Terms and Conditions agreed between the parties) shall be inapplicable unless agreed in writing by the Seller.

3. The Price and Payment

- 3.1 The Price of the Goods shall be the Seller's quoted price, which shall be binding upon the Seller provided that the Buyer shall accept the Seller's quotation within 14 days. The Price is exclusive of VAT, which shall be due at the rate ruling on the date of VAT invoice.
- 3.2 Payment of the Price and VAT shall be due prior to goods being despatched unless other Terms have been specifically agreed in writing.
- 3.3 Interest on overdue invoices shall accrue from the date when payment becomes due from day to day until the date of payment at a rate of 3% above Barclays Bank Plc's base rate from time to time in force and shall accrue at such a rate after as well as before any judgment.
- 3.4 The Seller shall not be bound to deliver the Goods until the Buyer has paid for them. Payment shall be due before the Delivery Date unless by prior agreement by the Seller.
- 3.5 If the Buyer fails to make any payment on the due date then without prejudice to any of the Seller's other rights the Seller may:
 - 3.5:1 Suspend or cancel deliveries of any articles due to the Buyer; and/or
 - 3.5:2 Appropriate any payment made by the Buyer to such of the Goods (or Goods supplied under any other contract with the Buyer) as the Seller may in its sole discretion think fit.
- 3.6 The Buyer may not set off against the Price (including any applicable VAT payable) amounts due from the Seller whether under the applicable contract of sale or otherwise.

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3.7 Prices are the Seller's ex-works prices and where the Seller agrees to arrange for the Goods to be sent to the Buyer, the Buyer shall be responsible for the costs of loading, carriage and unloading unless other Terms have been previously agreed in writing.

3.8 The Buyer shall within 21 days open an irrevocable letter of credit with a bank to be confirmed in favour of Barclays Bank plc payable 30 days at sight against production of a commercial invoice for the Goods and a clean onboard bill of lading for the Goods.

4. The Goods

4.1 This clause 4.1 applies if the contract for the sale of the Goods is a sale by description:

4.1.1 The quantity and description of the Goods shall be as set out in the Seller's quotation.

4.1.2 The Buyer shall inspect the Goods on delivery and shall within 4 working days of delivery notify the Seller of any alleged defect, shortage in quantity, damage or failure to comply with description or sample. The Buyer shall afford the Seller an opportunity to inspect the Goods within a reasonable time following delivery and before any use is made of them. If the Buyer shall fail to comply with these provisions the Goods shall be conclusively presumed to be in accordance with the contract and free from any defect or damage which would be apparent on a reasonable examination of the Goods and the Buyer shall be deemed to have accepted the Goods.

4.1.3 The Buyer shall notify the Seller of any non-delivery of a whole consignment of complete goods within 14 days of the date of despatch. Notwithstanding the receipt by the Seller of any such notice a clear signature on a carrier's delivery advice sheet shall be deemed to signify receipt of the quantity of cartons indicated on the advice sheet.

4.1.4 If the Goods are not in accordance with the contract for any reason the Buyer's sole remedy shall be limited to the Seller making good any shortage by replacing such Goods or, if the Seller shall elect, by refunding a proportionate part of the Price.

4.2 This clause 4.2 applies if the contract for the sale of the Goods is a sale by sample:

4.2.1 This contract of sale is a contract for a sale by sample.

4.2.2 The bulk of the Goods will correspond with the sample in quality provided that the Seller shall have no liability to the Buyer unless more than 5% of the Goods do not correspond.

4.2.3 The Buyer shall be deemed to have had a reasonable opportunity of comparing the bulk of any consignment of Goods with the sample after 4 days from delivery have expired.

4.2.4 Upon the Buyer having been deemed to have had a reasonable opportunity of comparing the bulk of any consignment with the sample the Buyer will also be deemed to have notice of any defect rendering the Goods not in accordance with the contract and to have accepted all the Goods so delivered.

4.3 And in either case

4.3.1 The Buyer shall take delivery of the Goods tendered notwithstanding that the quantity so delivered shall be either greater or less than the quantity purchased provided that:

4.3.1.1 Such discrepancy in quantity shall not exceed 10 % unless by prior written agreement between the Buyer and Seller.

4.3.1.2 The price shall be adjusted pro rata to the discrepancy.

4.3.2 The Seller's liability to the Buyer, whether for any breach of contract or otherwise, shall not in any event exceed the Price and the Seller shall be under no liability for any direct loss and/or expense or indirect loss and/or expense suffered by the Buyer or liability to third parties incurred by the Buyer.

4.3.3 Cardboard is an organic material that can vary slightly in consistency, finish, colour and thickness between batches and sometimes even within the same batch. We cannot therefore guarantee that there

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will always be a perfect match with all printing, finish and construction with a production run, especially if we are manufacturing with different batches.

5. Intellectual property

- 5.1** The specifications and designs of the Goods (including the copyright, design right or other intellectual property in them) shall as between the parties be the property of the Seller. Where any designs or specifications have been supplied by the Buyer for manufacture by or to the order of the Seller then the Buyer warrants that the use of those designs or specifications for the manufacture, processing, assembly or supply of the Goods shall not infringe the rights of any third party.
- 5.2** Where the seller provides original designs the ownership of the designs shall remain with the Seller unless otherwise agreed with the buyer.

6. Warranties and liability

The Seller warrants that the Goods will at the time of delivery correspond to the description given by the Seller. Except where the Buyer is dealing as a consumer (as defined in the Unfair Contract Terms Act 1977 Section 12) all other warranties, conditions or terms relating to fitness for purpose, merchantability or condition of the Goods and whether implied by statute or common law or otherwise are excluded.

7. Delivery of the Goods

- 7.1** Delivery of the Goods shall be made to the Buyer's address. The Buyer shall make all arrangements necessary to take delivery of the Goods whenever they are tendered for delivery. The Buyer shall bear any additional costs caused by the Buyer's failure to accept delivery on the Delivery Date.
- 7.2** The Seller may deliver the Goods by separate instalments in accordance with the agreed delivery schedule. Each separate instalment shall be invoiced and paid for in accordance with the provisions in this contract of sale.
- 7.3** The failure of the Buyer to pay for any one or more of the said instalments of the Goods on the due dates shall entitle the Seller (at the sole option of the Seller):
- 7.3:1** Without notice to suspend further deliveries of the Goods pending payment by the Buyer; and/or
- 7.3:2** To treat this contract as repudiated by the Buyer.
- 7.4** The Buyer shall promptly obtain all necessary import licences, clearances and other consents necessary for the purchase of the Goods. The Seller shall promptly upon request supply all documents reasonably required by the Buyer for this purpose.
- 7.5** The Seller shall not be liable for any loss or damage whatever due to failure by the Seller to deliver the Goods (or any of them) promptly or at all.
- 7.6** Notwithstanding that the Seller may have delayed or failed to deliver the Goods (or any of them) promptly the Buyer shall be bound to accept delivery and to pay for the Goods in full provided that delivery shall be tendered at any time within 3 months of the Delivery Date.
- 7.7** The Goods shall be delivered to the Buyer at the Seller's address. The risk in the Goods shall pass to the Buyer upon such delivery taking place.
- 7.8** The Seller shall arrange for carriage of the Goods to the Buyer's address unless otherwise agreed between the Buyer and Seller. The costs of carriage and any insurance, which the Buyer reasonably directs the Seller to incur shall be reimbursed by the Buyer without any set-off or other withholding whatever and shall be due on the date for payment of the Price. The carrier shall be deemed to be the Buyer's agent.

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8. Acceptance of the Goods

- 8.1** The Buyer shall be deemed to have accepted Goods 24 hours after delivery to the Buyer.
- 8.2** After acceptance the Buyer shall not be entitled to reject Goods that are not in accordance with the contract except under conditions stated in 4.1.2.
- 8.3** If the Buyer properly rejects any of the Goods which are not in accordance with the contract the Buyer shall nonetheless pay the full Price for such Goods unless the Buyer promptly gives notice of rejection to the Seller and at the Buyer's cost returns such Goods to the Seller before the date when payment of the price is due.
- 8.4** No Goods delivered to the Buyer, which are in accordance with the contract, will be accepted for return without prior written approval of the Seller on terms to be determined at the absolute discretion of the Seller.
- 8.5** If the Seller agrees to accept any such Goods for return the Buyer shall be liable to pay a handling charge of 10% of the invoice price. Such Goods must be returned by the Buyer carriage-paid to the Seller in their original shipping carton.
- 8.6** Goods returned without the prior written approval of the Seller may at the Seller's absolute discretion be returned to the Buyer or stored at the Buyer's cost without prejudice to any rights or remedies the Seller may have.

9. Title and Risk

- 9.1** The Goods shall be at the Buyer's risk from delivery.
- 9.2** In spite of delivery having been made property in the Goods shall not pass from the Seller until:
- 9.2.1** The Buyer shall have paid the Price, all delivery costs plus VAT in full; and
- 9.2.2** No other sums whatever shall be due from the Buyer to the Seller.
- 9.3** Until property in the Goods passes to the Buyer in accordance with clause 9.2 the Buyer shall hold the Goods and each of them on a fiduciary basis as bailee for the Seller. The Buyer shall store the Goods (at no cost to the Seller) separately from all other Goods in its possession and marked in such a way that they are clearly identified as the Seller's property.
- 9.4** Notwithstanding that the Goods (or any of them) remain the Property of the Seller the Buyer may sell or use the Goods in the ordinary course of the Buyer's business at full market value for the account of the Seller. Any such sale or dealing shall be a sale or use of the Seller's property by the Buyer on the Buyer's own behalf and the Buyer shall deal as principal when making such sales or dealings. Until property in the Goods from the Seller the entire proceeds of sale or otherwise of the Goods shall be held in trust for the Seller and shall not be mixed with other money or paid into any overdrawn bank account and shall be at all material times identified as the Seller's money.
- 9.5** The Seller shall be entitled to recover the Price (plus VAT) notwithstanding that property in any of the Goods has passed from the Seller.
- 9.6** Until such time as property in the Goods passes from the Seller the Buyer shall upon request deliver up such of the Goods as have not ceased to be in existence or resold to the Seller. If the Buyer fails to do so the Seller may enter upon any premises owned occupied or controlled by the Buyer where the Goods are situated and repossess the Goods. On the making of such request the rights of the Buyer under clause 9.4 shall cease.
- 9.7** The Buyer shall not pledge or in any way charge by way of security for any indebtedness any of the Goods which are the property of the Seller. Without prejudice to any of the other rights of the Seller, if the Buyer does so all sums whatever owing by the Buyer to the Seller shall forthwith become due and payable.

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- 9.8** The Buyer shall insure and keep insured the Goods to the full Price against 'all risks' to the reasonable satisfaction of the Seller until the date that the property in the Goods passes from the Seller, and shall whenever requested by the Seller produce a copy of the policy of insurance. Without prejudice to the other rights of the Seller, if the Buyer fails to do so all sums whatever owing by the Buyer to the Seller shall forthwith become due and payable.
- 9.9** The Buyer (if a limited company) shall promptly deliver the prescribed particulars of this contract to the Registrar in accordance with the Companies Act 1985 Part XII as amended. Without prejudice to the other rights of the Seller, if the Buyer fails to do so all sums whatever owing by the Buyer to the Seller shall forthwith become due and payable.
- 9.10** If the Buyer sends goods or samples to the Seller it is at their own risk and the Buyer must arrange suitable insurance cover for the full value whilst in transit and at the Seller's premises.
- 10. Remedies of Buyer**
- 10.1** Where the Buyer rejects any Goods then the Buyer shall have no further rights whatever in respect of the supply to the Buyer of such Goods or the failure by the Seller to supply Goods which conform to the contract of sale.
- 10.2** Where the Buyer accepts or has been deemed to have accepted any Goods then the Seller shall have no liability whatever to the Buyer in respect of those Goods.
- 10.3** The Seller shall not be liable to the Buyer for late delivery or short delivery of the Goods.
- 10.4** The Seller shall be under no liability whatever to the Buyer for any indirect loss and/or expense (including loss of profit) suffered by the Buyer arising out of a breach by the Seller of this contract.
- 10.5** In the event of any breach of this contract by the Seller the remedies of the Buyer shall be limited to damages. Under no circumstances shall the liability of the Seller exceed the Price of the Goods.
- 11. Proper law of contract**
- 11.1** This contract is subject to the law of England and Wales.
- 11.2** Any dispute or difference between the parties arising out of or in connection with this agreement shall first be referred to mediation in accordance with the mediation procedures of ADR Group, London. The mediator shall be agreed upon by the parties and failing such agreement within 15 (fifteen) days of one party requesting the appointment of a mediator and providing their suggestion therefore, the mediator shall be appointed by the then President of the Law Society. Unless otherwise agreed the parties shall share equally the costs of the mediation. The use of mediation will not be construed under the doctrines of laches, waiver or estoppel to affect adversely the rights of either party and in particular either party may seek a preliminary injunction or other judicial relief at any time if in its judgement such action is necessary to avoid irreparable damage.
- 11.3** The parties submit to the exclusive jurisdiction of the courts of England and Wales and irrevocably agree that proceedings issued out of the said courts may without prejudice to the rules of service of such courts be served on them by delivering such proceedings in an envelope addressed to the party to be served at the address for such party set out in this contract.